

M.R. Krishnamurthi Vs Chandan Ramamurthi and Others

Court: Delhi High Court

Date of Decision: July 3, 2008

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 7 Rule 11
Hindu Marriage (Amendment) Act, 1956 â€” Section 5(1)
Limitation Act, 1963 â€” Article 59, 60, 6, 6(1)

Citation: (2008) 151 DLT 463 : (2008) 104 DRJ 487 : (2008) 152 PLR 49

Hon'ble Judges: Badar Durrez Ahmed, J

Bench: Single Bench

Advocate: Shyamla Pappu and M.R. Krishnamurthi, for the Appellant; M.N. Rao Pramila Dhananjay, Radha Kant and D.K. Garg and Party-in-Person, for the Respondent

Final Decision: Allowed

Judgement

Badar Durrez Ahmed, J.

In this application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as

"CPC"), the defendant No. 1 has prayed for the rejection of the plaint on three counts:

- (1) Limitation ;
- (2) The plaint does not disclose any cause of action ; and
- (3) The suit is vexatious and frivolous.

2. The main prayer in the suit is for declaring the compromise decree dated 30.01.1987 passed by this Court in Suit No. 1970/1986 filed by the

plaintiff's mother (Ms Shyamla Pappu) against Late Mr M.K. Ramamurthi (MKR) as being null and void. A declaratory decree is also sought

declaring that defendant No. 2 is not the daughter of MKR and that the defendant No. 1 was not the wife of MKR. Interestingly, a declaration is

also sought that the decree dated 18.12.1985 passed by the Additional District Judge, Delhi dissolving the marriage between the defendant No. 1

and defendant No. 3 is null and void. Several other prayers have also been made, but these are the main prayers.

3. The case of the plaintiff is that the plaintiff is the son born out of the alleged wedlock of his mother and MKR. As such, being a co-parcener, he

is entitled to his share in the property bearing No. A-16, Niti Bagh, New Delhi. It is the case of the plaintiff that at the time when the compromise

decree dated 30.01.1987 was passed, the plaintiff was a minor and as his interest was not placed before the court, the said decree is liable to be

declared as null and void, inter alia, in view of the provisions of Order 32 Rule 7 CPC.

4. It is contended on behalf of the defendant No. 1 / applicant that the plaintiff is not the legitimate son of MKR inasmuch as there was no

marriage, what to speak of a legal marriage, between the plaintiff's mother and MKR. It was submitted that the plaintiff's mother had filed a suit

bearing No. 472/1986 in the District Court seeking an injunction against the defendant No. 1 and MKR in respect of the said property. Another

suit bearing No. 599/1986 was filed by the plaintiff's mother again before the District Court at Delhi, inter alia, seeking a declaration that she was

the legally wedded wife of MKR. Later, in the same year, MKR filed Suit No. 1970/1986 in this Court seeking an injunction against the plaintiff's

mother from interfering with his rights to enjoy the property bearing No. A-16, Niti Bagh, New Delhi.

5. It is further contended that a compromise had been arrived at and the same had been recorded in MKR's suit bearing No. 1970/1986. By

virtue of the compromise, MKR was regarded as the absolute owner of the said property bearing No. A-16, Niti Bagh, New Delhi. The terms of

the settlement as recorded in the compromise decree were, inter alia, that the plaintiff's mother would be entitled to occupy and use the ground

floor of the said premises during the lifetime of MKR, but she would have no access to the first floor. After the lifetime of MKR, the ground floor

would be occupied and used by Mr Vivek Ramamurthi (son of MKR through his earlier marriage with Smt Susan) and the present plaintiff. The

first floor would then fall in the share of the defendant No. 1 and her daughter. It was specifically indicated in the compromise that the plaintiff's

mother gives up all her contentions raised by her in her two suits, namely, Suit No. 472/1986 and Suit No. 599/1986. Consequently, the

compromise was taken on record and a decree was passed thereon in Suit No. 1970/1986. Suit Nos. 472/1986 and 599/1986 were withdrawn

by the High Court from the District Court and in terms of the compromise arrived at between the plaintiff's mother and MKR and defendant No.

1, the same were dismissed. The plaintiff, by the present suit, is seeking a declaration from this Court to declare that compromise decree dated

30.01.1987 as null and void.

6. On the point of limitation, it has been contended on behalf of the defendant No. 1 that the plaintiff, as per the averments made in the plaint, was

born on 27.05.1970. This means that he attained majority on 27.05.1988. It was submitted in the backdrop of Articles 59 and 60 of the Schedule

to the Limitation Act, 1963 that a minor could bring an action within three years of attaining majority. The three years would have to be counted

from 27.05.1988. The three years would elapse on 27.05.1991. The present suit has been filed in 1994 and, Therefore, the same is barred by

time and consequently the plaint is liable to be rejected in view of the provisions of Order 7 Rule 11 (d), CPC. It was further contended that, in

any event, the decree dated 30.01.1987 had attained finality. Since MKR died much later, i.e., on 26.04.1993, the decree has been worked out

and accepted by all, including the plaintiff who did not object to the same during the lifetime of MKR.

7. As regards the plea that the plaint does not disclose a cause of action, it was contended on behalf of the defendant No. 1 that the plaintiff claims

himself to be a co-parcener. The entire suit is based on this claim. Such a claim can be asserted only if the plaintiff was a legitimate son of MKR.

At the time when the plaintiff's mother claims to be married to MKR, both she and MKR had living spouses and, Therefore, such a marriage

would be a void marriage in view of Section 5(1) of the Hindu Marriage Act, 1956. It was contended that, in fact, there was no marriage at all

between the plaintiff's mother and MKR. Therefore, there is no question of the plaintiff claiming to be a co-parcener. It was also contended that

since the claims of the mother were dismissed inasmuch as the suits bearing Nos.472/1986 and 599/1986 filed by her were dismissed, the plaintiff,

being her son, cannot claim a higher status.

8. With regard to the suit being vexatious and frivolous, it was contended on behalf of the defendant No. 1 that after the compromise had been

entered into by the plaintiff's mother, the plaintiff's mother could not have instituted any further proceeding directly. However, the present suit filed

by the plaintiff is at her instance in an attempt to achieve indirectly what she cannot achieve directly. Such an attempt needs to be snubbed at the

first instance and is nothing but a vexatious and frivolous action and, Therefore, placing reliance on the Supreme Court decision in the case of T.

Arivandandam Vs. T.V. Satyapal and Another, , it was submitted that the plaint ought to be rejected.

9. The plaintiff's mother who happens to be a senior advocate appeared and argued on behalf of the plaintiff. With regard to the scope of an

application under Order 7 Rule 11, CPC, she submitted that the settled law is that only the plaint and the documents accompanying the plaint are

to be taken into consideration while deciding such an application. The averments made in the plaint are to be treated as correct for the purposes of

deciding as to whether the plaint is liable to be rejected or not under Order 7 Rule 11, CPC.

10. With regard to the question of limitation, she submitted that as revealed in the plaint, the suit has been filed because of the claims made by the

defendant No. 1 in a probate case No. 26/1993 filed by the defendant No. 1 in respect of an alleged will of MKR of 07.05.1990. The defendant

No. 1 has claimed that the decree passed on 30.01.1987 is binding on all parties. This decree comes in the way of the plaintiff who was not a

party to the earlier proceedings and it is for this reason that the present suit has been filed. She submits that the plaintiff gained knowledge of the

decree in 1993 and, Therefore, the three-year period would start to run from 1993 and not from 1988 as suggested by the defendant No. 1. She

submitted that the cause of action also arose on account of the defendant No. 1 claiming on the basis of the compromise decree, in 1993,

Therefore, the starting point of limitation would be in 1993 and since the suit was filed in 1994, it was within time.

11. With regard to the question of the plaintiff not disclosing a cause of action, she submitted that reading the averments in the plaint, it is apparent

that a threat to the right of the plaintiff has been clearly disclosed. The plaintiff was not a party to the proceedings which culminated in the

compromise decree of 30.01.1987. At that point of time, he was a minor. The plaintiff now seeks to claim his rights. The said compromise decree

comes in his way and this is the cause of action for the plaintiff. Consequently, she submitted, the plaint does disclose a cause of action and cannot

be rejected.

12. With regard to the allegation that the suit is vexatious and frivolous, she submitted that it is not so. The plaintiff was not a party to the earlier

proceedings and this is the first suit filed by the plaintiff claiming his rights.

13. Considering the arguments advanced on behalf of the parties, it is correct that an application under Order 7 Rule 11, CPC needs to be

considered only on the basis of the averments made in the plaint and any documents accompanying the plaint. It is also clear that an application

under Order 7 Rule 11, CPC has to be disposed of on the basis that what is stated in the plaint is true.

14. As regards the point of limitation raised by the learned Counsel for the defendant No. 1, I am of the view that he is correct in submitting that

the suit is beyond time. De hors the question of whether the plaintiff is or is not the legitimate son of MKR and de hors the question of the plaintiff's

mother's marriage with MKR, it is an admitted position that the plaintiff was born on 27.05.1970. This would mean that he would be 18 years of

age on 27.05.1988. From that date onwards, he would no longer be regarded as a minor. Article 59 of the Schedule to the Limitation Act, 1963

stipulates that the period of limitation for cancelling or setting aside an instrument or decree or for the rescission of a contract would be three years

and the time from which the period would begin to run would be when the facts entitling the plaintiff to have the instrument or decree cancelled or

set aside or the contract rescinded first become known to him. Plainly speaking, a person has three years time for seeking the cancellation of a

decree from the date from which he became aware of the facts entitling him to have the decree set aside or cancelled. Article 60 stipulates a period

of three years for setting aside a transfer of property made by the guardian of a ward. The suit can be filed by the ward, who has attained majority,

within three years of his attaining majority. Going by Article 60, the three years would expire on 27.05.1991.

15. Section 6 of the Limitation Act, 1963 and in particular Sub-section (1) thereof provides that where a person entitled to institute the suit or

make an application for the execution of a decree, is at the time from which the prescribed period is to be reckoned, a minor or insane or an idiot,

he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from

the date specified, therefore, in the third column of the schedule. What this provision basically means is that the time when the period of limitation

would begin to run would be on the date on which the minor attains majority. So, if a cause of action had accrued to a minor, when he was a

minor, if the period of limitation for such a cause of action was three years, then the same would begin to run not from the date on which the cause

of action accrued to the minor, but from the date on which he attains majority. Thus, construing Article 59 Along with Section 6(1), if the cause of

action accrued to the plaintiff when he was a minor, the starting point of limitation would be the date on which he attains majority, i.e., on

27.05.1988. The three-year period prescribed for filing a suit seeking the setting aside of a decree would come to an end on 27.05.1991.

16. The only question that has, Therefore, to be examined in the present case is -when did the facts entitling the plaintiff to have the instrument or

decree cancelled or set aside first become known to him? Paragraph 28 of the plaint reads as under:

28. Shri MKR pleaded with Shyamhlaji not to proceed with the suits as that would ruin his professional career. The suits were compromised after

confirming and accepting Shyamhlaji's pre-existing right in respect of the ground floor of A-16, Niti Bagh and it was categorically undertaken by

Shri MKR that the possession of Shyamhlaji would not be disturbed under any circumstances. The plaintiff came to know of the compromise

decree when defendant No. 1 filed probate case No. 26/93 and annexed the terms of the compromise decree as an annexure to the probate

petition.

17. The last portion of the above paragraph indicates that the plaintiff came to know of the compromise decree when the defendant No. 1 filed the

probate case 26/93. In other words, the suggestion is that the plaintiff attained knowledge only in 1993. If this were to be so, the starting point of

limitation would be 1993 and the suit would be within time. However, unfortunately for the plaintiff, this is not so. It is clearly indicated in the earlier

portion of the said paragraph 28 that Shri MKR pleaded with Shyamlaji not to proceed with the suit as that would ruin his professional career. This

is not what is stated in the compromise decree. The question that arises is - how did the plaintiff come to know that MKR pleaded with his mother

not to proceed with the suit as that would ruin his professional career ? This question can only be ascertained at this stage from what is stated in the

plaint itself. Looking at the verification at the end of the plaint, it is clear that paragraph 28 has been verified as true to the knowledge of the plaintiff

which means that the plaintiff was aware, de hors the filing of the probate case, that the suit had been compromised in 1987. He was aware

because he has verified the averments made in paragraph 28 as being true to his knowledge. From this discussion, it is clear that the plaintiff had

knowledge of the compromise decree even when he was a minor, i.e., in 1987 itself. Obviously, because he was a minor, he would get the benefit

of Section 6 of the Limitation Act, 1963 and the starting point of limitation would not be 1987, but would be 27.05.1988 when he attained

majority. The end point for the period of limitation being, 27.05.1991. The suit has been filed in 1994. Therefore, the same is barred by limitation

and, on this ground alone, the plaint is liable to be rejected. Because of the view taken by me on this question, it shall not be necessary for me to

express any view on the other two points raised by the defendant No. 1.

This application is allowed. The plaint is rejected. All the pending applications also stand disposed of.